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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,702	09/30/2003	Gail K. Buchler	MCP5017	4561
27777 7590 09/03/2008 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
SOROUSH, LAYLA				
ART UNIT		PAPER NUMBER		
1617				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/674,702

Applicant(s)

BUEHLER ET AL.

Examiner

LAYLA SOROUSH

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The response filed June 9, 2008 presents remarks and arguments submitted to the office action mailed February 8, 2008 is acknowledged.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-16, 19-22 over Gowan, Jr. (US 5374659 A—previously presented), Gergely et al. (US 5834019 A – previously presented), Patel et al. (US Pat No. 6569463) and Eichman (US Pat. No. 5,980,882—previously presented) is not persuasive. Therefore, the rejection of record is herewith maintained.

Claims 1-19, and 21-22 are pending. Claims 1-17 and 19, 21-22 are herein acted on the merits.

For Applicant's convenience, the rejections of record are restated below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, 19, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gowan, Jr. (US 5374659 A—previously presented), Gergely et al. (US 5834019 A – previously presented), Patel et al. (US Pat No. 6569463) and Eichman (US Pat. No. 5,980,882—previously presented).

Gowan, Jr. teaches an aqueous pharmaceutical suspension composition comprising an insoluble pharmaceutical active, a suspension stabilizing effective amount of xanthan gum (hydrocolloid and thickener), pregelatinized starch (swelling agent and thickener) and polyoxyethylene sorbitan monooleate (surfactant) (see abstract). The pH of the composition is preferably between 3.5 and 5 (col 5 line 6).

Application of the compositions and method of the present invention for medical and pharmaceutical uses can be accomplished by any clinical, medical and pharmaceutical methods and techniques as are presently or prospectively known to those skilled in the art. Thus it is intended that the present invention cover the modifications and variations of this invention provided that they come within the scope of the appended claims and their equivalents (col 7 lines 54-61).

The reference fails to teach the active agent, Loratadine, the nucleation inhibitor, PVP, and the amino polycarboxylic acid compound, EDTA.

Gergely et al. is solely used to show that Loratadine is virtually completely water-insoluble and has a very strongly hydrophobic character. It is thus extremely poorly wettable and therefore difficult to suspend. Its fine particles furthermore have the tendency to form a film on the water surface, to creep up the glass wall to a pronounced extent and to adhere relatively strongly there.

Patel et al. teaches "compositions of the present invention can be used for improved delivery of hydrophilic or hydrophobic pharmaceutical active ingredients, such as drugs, nutritional, cosmeceuticals and diagnostic agents (Col 28 line 57-67)." Such pharmaceuticals include loratadine. The pharmaceutical compositions can include one

or more additive such as solubilizers, i.e., additives to increase the solubility of the pharmaceutical active ingredient (col 29 lines 16-21). The "solid pharmaceutical compositions of the present invention can optionally include one or more additives, sometimes referred to as excipients. The additives can be contained in an encapsulation coat in compositions which include an encapsulation coat, or can be part of the solid carrier, such as coated to an encapsulation coat, or contained within the components forming the solid carrier. Alternatively, the additives can be contained in the pharmaceutical composition but not part of the solid carrier itself (col 28 lines 57-67)."

Hence reading on the limitation uniformly dispersed nucleation inhibitor of claim 1. Preferred solubilizers for use in the compositions include triacetin, triethylcitrate, ethyl oleate, ethyl caprylate, dimethylacetamide, N-methylpyrrolidone, N-hydroxyethylpyrrolidone, polyvinylpyrrolidone(nucleation inhibitor) (Col 29 line 57-60). Other additives include enzyme inhibitors and chelating agents such as EDTA.

Additionally, Patel et al. teaches "Spherical particles are preferred, and these may be produced through spheronization or a spherical crystallization process. Crystals or compact granules from dry compaction or extrusion processes, often available commercially, serve as good substrates (col 41 lines 5-10)."

Eichman teaches drug resin complexes stabilized by chelating agents. "The particle size of a resin can differ between two resins." The chelating agent is preferably EDTA (amino polycarboxylic acid compound). EDTA is known to stabilize drugs in solution by retarding their oxidation col 2 lines 60-61).

It would have been obvious to one of ordinary skill in the art to combine the teachings of Gowan, Jr., Gergely et al., Patel et al., and Eichman. The motivation to combine the teachings is because (1) Gowan, Jr. teaches an aqueous pharmaceutical suspension composition comprising an insoluble pharmaceutical active, a suspension stabilizing effective amount of xanthan gum (hydrocolloid and thickener), pregelatinized starch (swelling agent and thickener) and polyoxyethylene sorbitan monooleate (surfactant) (see abstract). Application of the compositions and method of the present invention for medical and pharmaceutical uses can be accomplished by any clinical, medical and pharmaceutical methods and techniques as are presently or prospectively known to those skilled in the art. Thus it is intended that the present invention cover the modifications and variations of this invention provided that they come within the scope of the appended claims and their equivalents (col 7 lines 54-61); (2) Gergely et al. teaches Loratadine is virtually completely water-insoluble and has a very strongly hydrophobic character. It is thus extremely poorly wettable and therefore difficult to suspend. Its fine particles furthermore have the tendency to form a film on the water surface, to creep up the glass wall to a pronounced extent and to adhere relatively strongly there., (3) Patel et al., teaches solubilizers for use in the compositions include triacetin, triethylcitrate, ethyl oleate, ethyl caprylate, dimethylacetamide, N-methylpyrrolidone, N-hydroxyethylpyrrolidone, polyvinylpyrrolidone(nucleation inhibitor) (Col 29 line 57-60). Other additives include enzyme inhibitors and chelating agents such as EDTA and (4) Eichman teaches drug resin complexes stabilized by chelating agents. "The particle size of a resin can differ between two resins." The chelating

agent is preferably EDTA (amino polycarboxylic acid compound). EDTA is known to stabilize drugs in solution by retarding their oxidation col 2 lines 60-61). A skilled artisan would have reasonable expectation of effectively stabilizing loratadine (antihistamine) a water-insoluble pharmaceutical active.

Gowan, Jr., Gergely et al., Patel et al., and Eichman meet all elemental steps of the instant claims and the compositions created thereof. Since the compositions prepared by Gowan, Jr., Gergely et al., Patel et al., and Eichman meets all elemental components of the instantly prepared composition, they would obviously exhibit the same properties as recited in claims 8-10 and 22. Although the reference teaches within the embodiment of the invention crystalline drug forms are envisaged, whether the drug is in crystal form or amorphous form does not effect the composition. Hence, the various forms are rendered obvious by the teachings of the prior art.

Response to Arguments

Applicants' arguments filed June 9, 2008 have been fully considered but they are not persuasive.

Applicants argue that Patel reference is used for solid dosage forms and the PVP acts as a solubilizer for the active ingredient after ingestion. However, the Applicants use the PVP in the aqueous suspension for the purpose of preventing agglomeration of the suspended crystals prior to ingestion. The PVP in Patel performs a very different function in a fundamentally different setting. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior

art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Examiner's motivation to combine a reference need not be the same as Applicants.

The arguments are not persuasive and the rejection is made **FINAL**.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617